

## Remarks

### **A. Status of the Claims**

Claims 1-7, 9-16, 19, 23-25, and 27-29 were pending prior to the Office Action mailed February 25, 2010. No claims have been amended. Applicants note that the last-filed amendment and remarks erroneously referenced FIG. 27 as exemplary support for the prior amendment to claim 13, but should have instead referenced FIGS. 13 and 14 as exemplary support for the amendment to claim 13. Claims 1-7, 9-16, 19, 23-25, and 27-29 remain pending.

### **B. Allowed Claims**

Applicant appreciates the Office's allowance of claims 1-7, 9-12, 23-25, and 27. These claims have not been amended, and thus remain patentable.

### **C. Claims 13-16, 19, 28, and 29 Are Patentable Over Gibertoni and Lockwood**

Claims 1-6, 9, 12-14, 16, 19, and 23-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gibertoni (EP 1,190,732) in view of Lockwood et al. (WO 02/43634 A2). Applicants respectfully disagree and traverse.

Independent claim 13 recites:

A wound insert for use with a vacuum bandage including a wound dressing member coupled to a wound, a port of the wound dressing member, and a tube coupled to the port and to a vacuum source, the wound insert being positioned between the vacuum bandage and a wound surface of the wound, the wound insert comprising:

a body made of a generally non-porous, flexible material, wherein the body is cylindrical in shape, wherein a height of the cylindrical body is substantially greater than a diameter of the cylindrical body, and further wherein the body includes either (i) a solid top surface and a solid bottom surface, or (ii) a single passageway along a longitudinal axis of the body which extends between and through a top end and a bottom end of the body.

The Office asserts that Gibertoni discloses a wound insert having the structural features of the claimed wound insert, but gives the preamble of claim 13 patentable weight. Action at 3. Recognizing that Gibertoni fails to disclose these features, the Office attempts to supply the deficiencies with Lockwood. Action at 3-4.

The rejection is improper because the asserted combination would change Gibertoni's principle of operation. As the office is aware, a proposed modification is improper if it would change the principle of operation of the prior art invention. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959); *see also* MPEP 2143.01(VI). Gibertoni discloses a drainage element . . . which comprises an elongated body provided with a plurality of internal channels provided with surface slits which produce drainage *by capillary action.*" Col. 2, ll. 30-34 (emphasis added). Thus, Gibertoni's principle of operation is explicitly drainage by capillary action.

In contrast, Lockwood discloses a bandage 10 for use with a **vacuum** source 12 to "provide[] **vacuum** therapy to the wound 16 to promote blood flow and remove exudate." P. 11, ll. 6-13 (emphasis added). Thus, Lockwood's principle of operation includes **vacuum** removal of exudate. The proposed modification of Gibertoni is therefore improper because it would require Gibertoni's **capillary**-drainage element to function with Lockwood's **vacuum** removal device, and thus *change* Gibertoni's capillary-drainage principle of operation.

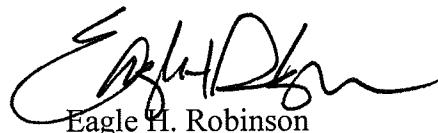
Dependent claims 14-16, 19, 28, and 29 are also patentable at least by virtue of their dependency from claim 13. *In re Fine*, 837 F.2d 1071(Fed. Cir. 1988); *see also* M.P.E.P. § 2143.03(V).

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejections of claims 13-16, 19, 28, and 29.

**Conclusion**

Applicants believe that the foregoing remarks fully respond to all outstanding matters for this application. Should the Examiner desire to sustain any of the rejections discussed in relation to this Response, the courtesy of a telephonic interview between the Examiner, the Examiner's supervisor, and the undersigned attorney at 512-536-3083 is respectfully requested.

Respectfully submitted,



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